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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/611,054	07/06/2000	Tom Gray	481340010023	5057
7590		05/03/2004	EXAMINER	
David B Cochran		KARMIS, STEFANOS		
Jones Day Reavis & Pogue		ART UNIT		
North Point		PAPER NUMBER		
901 Lakeside Avenue		3624		
Cleveland, OH 44114		DATE MAILED: 05/03/2004		

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/611,054

Applicant(s)

GRAY ET AL.

Examiner

Stefano Karmis

Art Unit

3624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This communication is in response to Applicant's amendment filed on 03 February 2004.

Status of Claims

2. Claims 2-13, 15-18, 20-31 and 33-36 have been amended. Claims 1, 14, 19 and 32 have been left as originally filed. Therefore claims 1-36 are under prosecution in this application.

Summary of this Office Action

3. The Examiner has considered the response submitted by the Applicant and is discussed in the next section below or in the following rejection. Claims 1-36 have been rejected under the consideration of the prior art listed below, and Applicant's request for allowance is respectfully denied.

Response to Arguments

4. The Examiner acknowledges Applicant's arguments with respect to the 35 U.S.C. 102 and 103 rejection in the previous office action and therefore withdraws the previous rejection.

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5. Regarding the 35 U.S.C. 112 rejection for claim 13, in method claims, data from the specification is not read into the claims. Therefore the equation $[[r_c]] R_c (1 - P_c / P_b)^{exp}$ is considered indefinite because there is no explanation in the claims to ascertain what information the formula is seeking and would not be apparent to one of ordinary skill in the art.

6. Any remaining arguments are now considered moot in view of the fact that a new grounds of rejection has been established.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-12, 15-30 and 33-36 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Kirkby et al. (hereinafter Kirkby) U.S. Patent 6,498,786.

Regarding independent claims 1 and 19, Kirkby discloses a method and system for service allocation among a plurality of entities requiring service allocation in a communications

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or computing environment in which a supply of services is initialized for one or more holding entities and endowing one or more bidding entities with an adjustably fixed amount of utility and a requirement for an amount of said supply of services, wherein said fixed amount of utility is a measure representative of the possibility of failure due to lack of resources (column 9, line 66 thru column 10, line 15); negotiating said supply of services of said holding entities, with each bidding entity bidding a selected amount of its said fixed amount of utility and redistributing said supply of said holding entities among said bidding entities based on said negotiating (column 10, lines 36-67 and column 11, lines 12-26).

Claims 2 and 20, the supply of services are comprised of a plurality of resources (column 5, lines 1-10).

Claims 3 and 21, the resources are available at multiple service levels (column 5, lines 44-61 and column 10, lines 55-67).

Claims 4 and 22, initializing, endowing, negotiating and redistribution operate dynamically in response to a change in supply of services, fixed amount of utility or requirement for supply of services (column 10, lines 36-67 and column 11, lines 12-26).

Claims 5 and 23, the redistribution of the supply represents a guarantee of service (column 19, lines 19-20).

Claims 6 and 24, the resources are one or more physical devices (column 5, lines 1-10 and column 12, lines 60-63).

Claims 7-8 and 25-26, the multiple service levels include varying levels of quality and capacity (column 5, lines 44-61 and column 10, lines 55-67).

Claims 9 and 27, the multiple service levels are determined by resource sets (column 5, lines 44-61 and column 10, lines 55-67).

Claims 10 and 28, the redistribution is done deterministically (column 10, lines 63-67).

Claims 11 and 29, the redistribution is done statistically (column 13, line 64 thru column 14, line 9-23).

Claims 12 and 30, the redistribution are based upon a proportion of supply held by the holding entity using a holding price (column 10, lines 63-67).

Claims 15 and 33, each bidding entity is represented by an agent (column 5, lines 1-23).

Claims 16 and 34, each of the supply of services are represented by an agent (column 5, lines 1-23).

Claims 17 and 35, the holding entity is represented by an agent (column 5, lines 1-23).

Claims 18 and 36, the physical devices are a plurality of telephones, telephone interface circuits, trunk interface circuits, telephone lines and telephone switches for establishing or maintaining a voice or data communication (column 12, lines 22-63).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 13-14 and 31-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kirkby et al. (hereinafter Kirkby) U.S. Patent 6,498,786.

Claims 13-14 and claims 31-32, Kirkby teaches redistribution based upon a proportion of supply held by the holding entity using a holding price (column 11, line 47 thru column 12, line 38). Kirkby fails to teach the manner in which the proportion is calculated. Official Notice is taken that proportion formulas are old and well known in the art. Therefore it would have been obvious to someone of ordinary skill in the art that a formula such as $r_c (1 - P_c / P_b)^{exp}$ could be applied to determine proportions because it provides a standardized and thus more efficient practice when determining proportions based on price and supply.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stefano Karmis whose telephone number is (703) 305-8130. The examiner can normally be reached on M-F: 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (703) 308-1065. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-1113.

Respectfully Submitted
Stefano Karmis
20 April 2004



VINCENT MILLIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600